

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37224, July 9, 1999, unless otherwise noted.

Subpart 536.1—General

536.101 Applicability.

If a requirement in this part is inconsistent with a requirement in another GSAR part, this part takes precedence.

Subpart 536.2—Special Aspects of Contracting for Construction

536.213 Special procedures for sealed bidding in construction contracting.

536.213-3 Invitations for bids.

536.213-370 Bids that include alternates.

(a) The base bid must include all features essential to a sound and adequate building design. If it appears that funds available for a project may be insufficient to include all desired features in the base bid, you may issue a solicitation for a base bid and include one or more alternates in the order of priority. Use alternates only if they are clearly justified and involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only “add” alternates.

(b) Before opening bids that include alternates, determine, and record in the contract file, the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening. The amount is the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to award to the low bidder if the following condition is met: the award amount of the base bid plus the combination of alternate items does not exceed the amount offered for the base bid and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation. This requirement prevents the displacement of the low bidder by manipulating the alternates to be used.

536.213-371 Bids that include options.

(a) Subject to the limitations in paragraph (c) of this section, you may include options in contracts if it is in the Government's interest.

(b) the appropriate use of options may include, but is not limited to, any of the following:

(1) If additional work is anticipated but funds are not expected to be available at the time of award, and it would

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not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) If fixed building equipment, e.g. elevators or escalators, will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) You must not use options under any of the following conditions:

(1) the prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded.

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions must state the period within which the options may be exercised.

(e) Solicitations must state whether the basis of award is inclusive or exclusive of the options. Before issuing a solicitation that includes evaluated options, you must determine that there is reasonable certainty that funds will be made available to permit exercise of the option.

536.213-372 Bids that include both alternates and options.

(a) Solicitations may include both alternates and options if the conditions in 536.213-370, Bids that include alternates, and 536.213-371, Bids that include options, are satisfied. In these solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for the base bid and the alternates, in the order of priority listed in the solicitation, that provide the most work features within the funds available at bid opening, plus all options designated to be evaluated.

(b) The basis of award may require the evaluation of options associated with alternates if the related alternate is selected.

(c) Before opening bids that include both alternates and options, determine, and record in the contract file, the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded must

be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder if the following condition is met: the award amount of the base bid and evaluated options plus the alternate items does not exceed the amount offered for the base bid, the evaluated options, and the same combination of alternate items by any other responsible bidder whose bid conforms to the solicitation.

536.270 Exercise of options.

(a) If exercising an option, notify the contractor, in writing, within the time period specified in the contract.

(b) Exercise options only after determining that all the following conditions exist:

(1) Funds are available.

(2) The requirement covered by the option fulfills an existing Government need.

(3) Exercising the option is the most advantageous method of satisfying the Government's need, price and other factors considered.

(c) Before exercising an option, you must determine that the action complies with the option's terms and this section's requirements. Include your written determination in the contract file.

(d) The contract modification, or other written document which notifies the contractor of the exercise of the option, must cite the option clause as authority. If exercising an unpriced or unevaluated option, cite the statutory authority permitting the use of other than full and open competition (see FAR 6.302 and 517.207).

536.271 Project labor agreements.

(a) *Authority.* This subpart implements the Presidential memorandum of June 5, 1997, on using project labor agreements (PLAs) on Federal construction projects. The Presidential memorandum authorizes executive departments and agencies to require PLAs on large and significant construction projects for facilities to be owned by a Federal department or agency.

(b) *Applicability.* These policies and procedures apply to all GSA activities

authorized to award contracts for construction of facilities to be owned by a Federal department or agency. You may use a PLA in leasehold arrangement, Federally funded projects, and other appropriate circumstances.

(c) *Definitions. Construction* means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. The terms buildings, structures, or other real property are defined further in Federal Acquisition Regulation (FAR) 36.102.

Labor organization means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, and any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization (42 U.S.C. 2000e(d)).

Large and significant project means a Federal construction project with a total cost to the Federal Government of more than \$5 million.

Project Labor Agreement (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Government's procurement interest in cost, efficiency, and quality.

(d) *Policy.* (1) You may, on a project-by-project basis, use a PLA on a large and significant project when both of the following conditions apply:

(i) A PLA will advance the Government's procurement interests.

(ii) No laws that apply to the specific construction project preclude the use of the PLA.

(2) Do not require any contractor to enter into a PLA with any particular labor organization.

(3) The use of a PLA is not intended to create any right or benefit, substantive or procedural enforceable by a nonfederal party against the United States, its departments, and agencies, its officers or employees, or any other person.

(e) *Procedures.* (1) As part of procurement planning for construction projects with a total estimated cost to the Federal Government of more than \$5 million, you may consider requiring a PLA.

(2) To require a PLA, you must determine whether use of a PLA will advance the Government's procurement interests in all the following areas:

(i) Cost, efficiency, and quality.

(ii) Promoting labor-management stability.

(iii) Promoting compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other matters.

(3) In making the determination required by paragraph (b) of this section, consult with the agency project or program manager and obtain guidance from the Agency Labor Advisor and assigned legal counsel. You should consider the following factors:

(i) Whether past experience with construction projects in the location where the project will be performed indicates that a PLA will be effective.

(ii) Whether delays in performance of the construction contract would have significant adverse impact on the mission of the agency or operation of the installation or facility.

(iii) Whether any law applies to the specific construction project that would impede use of a PLA.

(iv) Whether the labor organizations in the area can provide a reliable source of skilled, experienced building trades workers in all crafts needed on the job site for the project's duration (taking into consideration other major construction work in the area).

(v) Whether the Government can benefit from uniform work rules and working conditions and established procedures for resolving labor disputes, no strike/no lock-out protections.

(vi) Whether the Government can benefit from increased stability and

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labor peace that derives from greater labor-management cooperation.

(vii) Whether the requirements for a PLA will unreasonably restrict competition.

(viii) Other relevant information.

(4) Document the rationale supporting your decision to require a PLA in the contract file.

(5) Provide the following information to the Agency Labor Advisor (GSA Acquisition Policy Division (MVP)):

(i) A brief description of the project.

(ii) The estimated cost.

(iii) A copy of the document supporting your decision to require a PLA.

(iv) A copy of the solicitation.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.

536.570-1 Definitions.

Insert 552.236-70, Definitions, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-2 Authorities and limitations.

Insert 552.236-71, Authorities and Limitations, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570-3 Specialist.

Insert 552.236-72, Specialist, in solicitations and contracts for construction if the technical sections of the contract require unusual experience or specialized facilities for adequate contract performance.

536.570-4 Basis of award—construction contract.

(a) Insert a provision substantially the same as 552.236-73, Basis of Award—Construction Contract, in solicitations for fixed-price construction contracts except if any of the following conditions apply:

(1) The solicitation requires the submission of a lump-sum bid only.

(2) The solicitation is for an indefinite quantity contract.

(3) The contract amount is not expected to exceed the simplified acquisition threshold.

(b) *Instructions for use.*

If the solicitation requests the submission of a . . .	Then use the . . .
(1) Base bid and unit prices ..	Basic provision.
(2) Base bid and options	Provision with its Alternate I.
(3) Base bid and alternates ...	Provision with its Alternate II.
(4) Base bid, alternates, and options.	Provision with its Alternate III.

536.570-5 Working hours.

Insert 552.236-74, Working Hours, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570-6 Use of premises.

Insert 552.236-75, Use of Premises, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-7 Measurements.

Insert 552.236-76, Measurements, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-8 Specifications and drawings.

Insert the clause at 552.236-77, Specifications and Drawings, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570-9 Shop drawings, coordination drawings, and schedules.

Insert the clause at 552.236-78, Shop Drawings, Coordination Drawings, and Schedules, in solicitations and contracts if construction is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

536.570-10 Samples.

Insert the clause at 552.236-79, Samples, in solicitations and contracts for construction if the technical sections

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of the contract require the submission and approval of samples.

536.570-11 Heat.

Insert the clause at 552.236-80, Heat, in solicitations and contracts if construction, dismantling, demolition, or removal of improvements is contemplated.

536.570-12 Use of equipment by the Government.

Insert the clause at 552.236-81, Use of Equipment by the Government, in contracts requiring heating and air-conditioning of existing buildings if it may be necessary for the Government to operate all or part of the equipment before final acceptance of the contract.

536.570-13 Subcontracts.

Insert 552.236-82, Subcontracts, in solicitations and contracts for construction if the contract amount is expected to exceed the simplified acquisition threshold.

536.570-14 Requirement for a Project Labor Agreement.

Insert a clause substantially the same as 552.236-83, Requirement for a Project Labor Agreement, in solicitations and contracts that will require a project labor agreement.

Subpart 536.6—Architect-Engineer Services

536.602 Selection of firms for architect-engineer contracts.

536.602-1 Selection criteria.

(a) FAR 36.602-1 requires that agencies include “location in the general geographical area of the project and knowledge of locality of the project” as one of several selection criteria.

(1) Do not use this evaluation factor as a minimum qualification requirement for determining whether a firm is eligible to compete for a proposed project.

(2) This factor must not exceed 5 percent of the total weight of all evaluation criteria. In order to receive maximum score for this factor, the architect-engineer firm(s) must demonstrate that at least 35 percent of the architect-engineer contract services (based

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on the total contract price) will be accomplished within the geographical boundaries established for the project.

(3) Under an approved class deviation from FAR 36.602-1(a)(5), this factor does not apply to projects that the Chief Architect of GSA determines have national significance.

(b) The public announcement (Commerce Business Daily notice) for a proposed project should identify the general geographical area of the project by either:

(1) A radius in miles or other appropriate unit of measure.

(2) The Standard Metropolitan Statistical Area, county(ies), state(s) surrounding the project, or other appropriate geographic boundaries.

(c) Architect-engineer selections under the Design Excellence Program must apply the geographical evaluation criteria in the second phase.

(d) The public announcement (Commerce Business Daily notice) must provide the number of calendar days the architect-engineer of record has to establish a production capability within the general geographical area of the project. You may allow the architect-engineer of record up to 45 calendar days after contract award to establish this production capability.

[65 FR 11247, Mar. 2, 2000]

PART 537—SERVICE CONTRACTING

Subpart 537.1—Service Contracts—General

Sec.

537.101 Definitions.

537.110 Solicitation provisions and contract clauses.

Subpart 537.2—Advisory and Assistance Services

537.270 Contract clause.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 37226, July 9, 1999, unless otherwise noted.

Subpart 537.1—Service Contracts—General

537.101 Definitions.

Contracts for building services means contracts for services relating to the